



An
Bord
Pleanála

Inspector's Report ABP-313845-22.

Development

Permission for the importation of waste material comprising of construction and demolition wastes for the purposes of filling or raising lands to facilitate land reclamation. An Environmental Impact Assessment (EIA) Screening Report, an Appropriate Assessment (AA) Screening Report and Natura Impact Statement (NIS) are included with the application.

Location

Inchicorrigane East, Kilcummin, Killarney, Co Kerry.

Planning Authority

Kerry County Council.

Planning Authority Reg. Ref.

22/346.

Applicant(s)

Michael F Quirke & Sons.

Type of Application

Permission.

Planning Authority Decision

Grant.

Type of Appeal

Third Party

Appellant(s)

Mary Fleming.

Observer(s)

None

Date of Site Inspection

23/09/2022.

Inspector

A. Considine.

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1.0 Site Location and Description

- 1.1. The subject site is located approximately 6.5km to the east of Kilcummin and approximately 10.8km to the east of Killarney in County Kerry. Access to the site is over the local road network, with direct access from the local road which connects Gneevguilla to Killarney, and which forms the western boundary of the landholding submitted. The area is very rural in character with a small number of residential properties to the south.
- 1.2. The site the subject of this appeal has a stated area of 1.936ha and forms part of a larger site, with an overall stated area of 4.58ha, which appears to have been filled in in the past. The filled part of the wider site lies immediately adjacent to the public road which runs along the western boundary of the site, and the proposed fill area lies to the east of this area.
- 1.3. While the overall landholding site is generally regular in its shape, the proposed fill area is irregular in shape and follows the lines of the previously filled area. The subject site is bound on three sides by drains to the north and west and a stream to the east. The landholding includes mature hedgerows and trees which form the boundaries of the site.

2.0 Proposed Development

- 2.1. Permission is sought, to construct a waste facility for the importation of waste material comprising of construction and demolition wastes including concrete (17 01 01) bricks (17 01 02), tiles and ceramics (17 01 03), non - contaminated soil and stones (17 05 04), mixtures of concrete, brick, tiles and ceramics (17 01 07) for the purposes of filling or raising lands to facilitate land reclamation. An Environmental Impact Assessment (EIA) Screening Report, an Appropriate Assessment (AA) Screening Report and Natura Impact Statement (NIS) are included with the application. Subject to planning an application for a waste facility permit will be made to Kerry County Council prior to any development, all at Inchicorrigan East, Kilcummin, Killarney, Co Kerry.
- 2.2. The application included a number of supporting documents including as follows;
 - Plans, particulars and completed planning application form

- Cover letter from the applicants' agent advising as follows:
 - The proposal seeks to complete the filling of previously partially filled agricultural land to improve the agricultural use of the lands.
 - The proposed timeline for filling is anticipated to be a maximum of 5 years.
 - The development will import 12,000 tonnes of waste per annum.
 - This equates to approximately 2 lorries per day, being 4 movements per day.
 - The site boundary and extent of proposed filling is set back from the existing deep drains by 10m, from the smaller drains by 7m and from the Maulyarkane Stream by 10m.
 - A silt fence will be installed to direct surface water run-off to 3 shallow surface water catch-pits with a storage capacity of 400m³.
 - The facility will be solely for the use of the applicant – who is the holder of an existing transport and facility Waste Permit - and, by prior appointment, Kerry County Council. It will not be open to the public or other waste permit holders.
 - The development has been designed in accordance with the recommendations in the EPA Landfill Manuals, and the closure plan will incorporate the recommendations in the EPA Manual Landfill Reclamation and Aftercare. The site specific after-use is agriculture.
- Construction Environmental Management Plan
- Environmental Impact Assessment Screening Report
- Natura Impact Assessment
- Appropriate Assessment Screening Report

2.3. In terms of the proposed development, the Board will note that works will include the following:

- The relocation of the site entrance to improve sight distances.

- The installation of a 600mm drainage pipe in the existing drain to allow for the construction of the new site entrance.
- Closure of the existing entrance with a soil berm.
- Installation of environmental controls to include silt fences and drainage catchpits.
- Importation of 60,000 tonnes of inert material to raise the level of the site.
- 300mm layer of topsoil to be spread across the infilled site and reseed the infill section of the land to best agricultural practice.

2.4. The submitted details indicate that the area of proposed fill will extend to 1.616ha with the average depth of fill noted at 1.850m. The existing site levels appear to range from between approximately 177m to 181m along the northern area of the site and between 178m to 180.8m to the southern area of the site. The proposed finished level of the site is indicated at between 180.5m to 182m generally across the full area.

3.0 Planning Authority Decision

3.1. Decision

3.1.1. The Planning Authority decided to grant planning permission for the proposed development subject to 4 conditions.

3.2. Planning Authority Reports

3.2.1. Planning Reports

The Planning report considered the proposed development in the context of the details submitted with the application, internal technical reports, third party submission and the County Development Plan policies and objectives. The report also includes an Appropriate Assessment Report which was prepared by the County Biodiversity Officer, as Appendix 1 to the report.

The Planning Report notes that the site is located within a rural area and concludes that the principle of the development can be considered. There are no issues noted

in terms of visual impacts, road safety / traffic, residential amenity or archaeology. With regard to water pollution and ecological impacts, the report notes the mitigation measures proposed and concludes that subject to compliance with the Construction and Environmental Management Plan and the implementation of the mitigation measures, the development is acceptable. The report further notes the EIA Screening submitted with the planning application and accepts the conclusion that EIA is not required.

The report recommends that permission be granted for the proposed development. This Planning Report formed the basis of the Planning Authority's decision to grant planning permission.

3.2.2. Other Technical Reports

County Archaeologist: The report notes that there are no recorded monuments in proximity to the proposed development site and no mitigation is required. However, given the scale of the development, pre-development archaeological testing should be carried out across the site if it is intended to strip the site prior to deposition.

Area Engineer: Notes no objection to the proposed development subject to compliance with a number of conditions.

Ecology Report: The Biodiversity Officers report sets out the details of the proposed development and includes an Appropriate Assessment. The report concludes that adverse effects on the integrity of a European Site are not considered likely and are excluded.

It is requested that if permission is granted that the mitigation outlined in the NIS form a condition.

Site Assessment Unit: The Board will note that a report from this Unit of Kerry County Council was included in the file in error and the report does not relate to the subject proposed development or site.

3.2.3. Prescribed Bodies

Environmental Health Service (HSE): The report recommends that the development comply with all the legal limits as appropriate and

ensure that all necessary control measures are undertaken during the construction and operational stages. It is further recommended that a system or procedure be provided to effectively deal with complaints during the construction and operational phases of the development.

Inland Fisheries Ireland: The report notes that the Quagmire Stream runs at the southern side of the site. It is of good water quality and is an important salmonid spawning and nursery stream flowing through Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC into the River Flesk.

The report raises a number of issues including as follows:

- The Quagmire Stream is to be left untouched with a 10m riparian exclusion area fenced off. Silt fencing required and to be inspected regularly.
- The current water courses and / or drains within the site are not to be used as mitigation measures and all mitigation measures are to be constructed outside sufficient buffer zones which are to be installed along all water courses / drains on the site.
- Monitoring of all land drains before they leave the site to be undertaken daily while material is being deposited on the site, while reclamation is being undertaken and thereafter until all works are complete and the land stable.
- Works should be prohibited in prolonged wet conditions and there shall be no machinery movement on waterlogged ground.
- All mitigation measures to be in place and functioning before any inert waste recovery operation commences.
- The applicant should be aware of any biosecurity concerns and the identification of any invasive species present or imported must be addressed.

Irish Water: No objection.

3.2.4. **Third Party Submissions**

There are 2 no third-party objections/submissions noted on the planning authority file from Ms. Catherine Murphy and Ms. Mary Fleming. The issues raised are summarised as follows:

- Disruption of the natural environment of bogland on the site which is 415m deep.
- Contamination of the stream which passes through the site.
- Disruption of local wildlife.
- Roads and traffic issues, including the use of the road which has a bog foundation, and the site is at an accident blackspot.
- Impact on the farming activities of adjacent land owners.
- Impact of disturbing the site which holds a large amount of illegally dumped material deposited over many years with concerns raised for pollutants.

4.0 **Planning History**

There is no relevant planning history pertaining to the subject site.

The applicant advises that pre-planning advice was sought from the Area Planner in relation to draft proposals. In preparing the subject application, the applicant advises that the issues highlighted by the PA have been addressed.

5.0 **Policy and Context**

5.1. **National Planning Framework – Project Ireland 2040, DoHP&LG 2018**

- 5.1.1. Chapter 9 of the NPF deals with Environmental and Sustainability Goals and with regard to managing waste, the Framework seeks to provide ‘Adequate capacity and systems to manage waste in an environmentally safe and sustainable manner’. It is further stated that ‘Ireland is advancing its development as a circular economy and bio economy where the value of all products, materials and resources is maintained for as long as possible and waste is significantly reduced or even eliminated.

- 5.1.2. National Planning Objective 56 seeks to “Sustainably manage waste generation, invest in different types of waste treatment and support circular economy principles, prioritising prevention, reuse, recycling and recovery, to support a healthy environment, economy and society”.

5.2. Southern Region Waste Management Plan 2015-2021

- 5.2.1. Chapter 11 of the Plan deals with Packaging Waste and other Priority Waste Streams which includes, at Section 11.2 Construction and Demolition (C&D) Wastes. C&D waste is described in the EPA National Waste Reports (NWRs) as all waste that arises from C&D activities – excluding excavated soil from contaminated sites. C&D calculations in the Plan also include soil and stone waste collected. The bulk of C&D waste collected in the region is soil and stone, accounting for approximately 68% and such waste is primarily managed at LA permitted infill sites.
- 5.2.2. The plan further states that traditionally, the recovery of much of the C&D waste stream has been managed by placing it in a variety of land use applications. This treatment, collectively known as backfilling includes land reclamation, improvement or infill works. The largest fraction of the C&D waste stream arising is soil and stones, which (if uncontaminated) typically undergoes little if any treatment prior to recovery at these sites. Many sites selected for infill facilities are considered marginal agricultural land; these may include wetland habitats or lands subject to flooding. There is increasing recognition of the potential ecological and biodiversity value of these types of wetland sites. There is also a sense that at many of these sites, the deposition of waste material was the primary purpose of the activity rather than improvement or development of the land.

5.3. Development Plan

- 5.3.1. The Board will note that the subject application was submitted to the Council under the Kerry County Development Plan 2015. In the interim, the Board will note that the Elected Members of Kerry County Council adopted the Kerry County Development Plan 2022-2028 at a full Council Meeting on the 4th of July 2022. The Plan came into effect on the 15th of August 2022 and incorporates the Planning and Development (Kerry County Development Plan 2022-2028) Direction 2022, dated 5th December

2022. Therefore, the 2022 CDP is the relevant policy document pertaining to the subject site.

5.3.2. The site is located within a rural area within the Municipal District of Castleisland / Corca Dhuibhne which is identified as being under urban influence. The site is also located within a visually sensitive area in terms of landscape. Chapter 11 of the CDP deals with Environment and the following objectives are considered relevant given the nature of the receiving site:

KCDP 11-14: Support actions identified in *Ag Climatise* including on-farm measures to sequester carbon by the establishment of wetlands at appropriate locations.

KCDP 11-15: Facilitate and support the protection and enhancement of wetlands as nature-based solutions to flood management, climate change, and the biodiversity crisis.

5.3.3. Chapter 13 deals with Water and Waste Management. Section 13.3 of the Plan specifically deals with Waste Management and in this regard, the following policy objectives are relevant:

KCDP 13-27: Ensure the implementation of the Regional Waste Management Plan with particular emphasis on waste reduction, reuse and recycling and the sustainable disposal of residual waste in the most appropriate manner.

KCDP 13-28: Facilitate the implementation of the current Regional Waste Management Plan, and any replacement or amending plan, to include implementation of the waste hierarchy and maximising the diversion of waste from landfill in accordance with current national and European policy.

KCDP 13-32: Facilitate the on-going sustainable provision and maintenance of adequate licensed landfill capacity for the disposal of residual waste at an appropriate and sustainable location(s) in the County.

KCDP 13-38: Support innovative initiatives that develop the circular economy through implementation of the Regional Waste Management Plan for the Southern Region 2015-2021 and its successor.

KCDP 13-39: Support the work of the Regional Waste Management Office and all state bodies in the Region to implement the EU Action Plan for the Circular Economy-Closing the Loop to ensure sustainable patterns of consumption and production.

5.4. Natural Heritage Designations

The site is not located within any designated site. The closest Natura 2000 site is the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365) which is located approximately 1.6km to the east of the subject site. In addition to the above, the following Natura 2000 sites lie within 15km of the subject site:

- The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) - approximately 6.5km to the north
- The Blackwater River (Cork/Waterford) SAC (Site Code: 002170) - approximately 6.8km to the south east.
- Castlemaine Harbour SAC (Site Code: 000343) - approximately 7km to the west
- Sheheree (Ardagh) Bog SAC (Site Code: 000382) - approximately 10.6km to the south west.
- The Killarney National Park SPA (Site Code: 004038) - approximately 10.8km to the south west.

5.5. Environmental Impact Assessment

5.5.1. The requirement for EIA of certain types of developments is transposed into Irish legislation under the Planning and Development Act 2000, as amended and the Planning and Development Regulations 2001 as amended. Schedule 5, Part 1 of the Regulations provides a list of projects which are subject to mandatory EIA based on, *inter alia*, their scale, nature, location and context. Part 2 of Schedule 5 includes a

list of projects that require EIA where specific thresholds are breached or where it is determined that there is potential for significant environmental impact. An Environmental Impact Assessment Screening report was submitted with the application, and I have had regard to same.

5.5.2. The proposed development the subject of this appeal relates to the construction of a waste facility for the importation of construction and demolition wastes, for the purposes of filling / raising the land to facilitate land reclamation. In this context, the following Schedule 5 Part 1 projects relate to waste management:

10. Waste disposal installations for the incineration or chemical treatment as defined in Annex IIA to Directive 75/442/EEC under heading D9, of non-hazardous waste with a capacity exceeding 100 tonnes per day.

The development does not come within the scope of the above.

5.5.3. Schedule 5 Part 2 projects

1. Agriculture, Silviculture and Aquaculture

(c) Development consisting of the carrying out of drainage and/or reclamation of wetlands where more than 2 hectares of wetlands would be affected.

11. Other projects

(b) Installations for the disposal of waste with an annual intake greater than 25,000 tonnes not included in Part 1 of this Schedule.

5.5.4. Article 92 of the Planning and Development Regulations, 2001, (as amended) defines sub-threshold development, as 'development of a type set out in Schedule 5 which does not exceed a quantity, area or other limit specified in that Schedule in respect of the relevant class of development'.

5.5.5. In terms of Schedule 5 Part 2(1)(c), the applicant advises that the subject site could be considered to be a wetland as it is a peatland habitat. However, the EIA Screening report submits that due to the site measuring 1.936 ha, the project is considered to be sub-threshold and mandatory EIA is not required. In terms of Schedule 5 Part 2(11)(b), the applicant advises that the maximum annual intake will be 12,000 tonnes of inert soil and stone (a total of 60,000 tonnes over a period of 5

years) which is below the 25,000 tonnes per annum criteria. The project is considered to be sub-threshold and mandatory EIA is not required.

5.5.6. The site is located in a rural area which is predominantly agricultural in nature. The introduction of a waste facility as described will not have an adverse impact in environmental terms on surrounding land uses. It is noted that the site is not designated for the protection of the landscape or of natural or cultural heritage and the proposed development is not likely to have a significant effect on any European Site as discussed below per AA section of this report and while there is a potential hydrological connection present, given the proximity of the Quagmire River along the eastern boundary of the landholding, the proposed mitigation measures including silt fences and a 10-20m riparian buffer zone, will prevent significant impact on the nearby water courses, which is linked to a European site. The proposed development would not give rise to a risk of major accidents or risks to human health.

5.5.7. Having regard to: -

- The nature and scale of the proposed development, which is under the mandatory threshold in respect of Schedule 5 Part 2 projects, Class 1 - Agriculture, Silviculture and Aquaculture and Class 11 – Other Projects of the Planning and Development Regulations 2001 (as amended),
- The location of the site within the rural area,
- The location of the site outside of any sensitive location specified in article 109 of the Planning and Development Regulations 2001 (as amended) and the mitigation measures proposed to ensure no connectivity to any sensitive location,
- The guidance set out in the “Environmental Impact Assessment (EIA) Guidance for Consent Authorities regarding Sub-threshold Development”, issued by the Department of the Environment, Heritage and Local Government (2003), and
- The criteria set out in Schedule 7 of the Planning and Development Regulations 2001 (as amended),

I have concluded that, by reason of the nature, scale and location of the subject site, the proposed development would not be likely to have significant effects on the environment and that on preliminary examination an environmental impact assessment report for the proposed development was not necessary in this case.

6.0 The Appeal

6.1. Grounds of Appeal

6.1.1. This is a third-party appeal, by Ms. Mary Fleming, against the decision of the Planning Authority to grant planning permission for the proposed development. The appeal includes the original submission to the Planning Authority and submits that the grounds of appeal relate to dissatisfaction with the outcome of the Planning Authority's assessment and requires a review of all serious concerns regarding the environmental issues as raised in her original submission to the PA.

6.2. First-Party Response to Third-Party Appeal

6.2.1. The applicants' have responded to the third-party appeal. The response to the grounds of appeal is summarised as follows:

- An overview of the proposed development is provided, and it is noted that the area of the subject appeal site was historically excavated in the past.
- The main road which runs adjacent to the site is in good structural order and is subject to HGV traffic at present.
- The proposed development will generate 4 no. HGV movements per day which will not have a detrimental impact on the local road network.
- The junction of the two local roads referred to by the appellant was considered and discussed with Kerry County Council. The result was the proposal to relocate the proposed access to the site to improve safety and sight distances.
- The proposed access will be located within 10m of an existing access which is across the local road. The volume of traffic generated will not have an impact on the existing entrance.

- AA Screening, Natura Impact Assessment and EIA Screening were conducted as part of the application. The AA Screening concluded that there might be the possibility of impacts on the Killarney National Park, Macgillycuddy's Reeks and Carragh River Catchment SAC and accordingly an NIS was prepared.
- A number of mitigation measures and avoidance measures will be implemented at the site.
- It is deemed that once mitigation measures are implemented, there will be no potential for significant adverse effects to the SAC as a result of the development.
- Only soil and inert material will be imported to the site in accordance with the CEMP.

6.3. **Planning Authority Response**

None.

6.4. **Observations**

None.

7.0 **Planning Assessment**

7.1. **Introduction**

- 7.1.1. At the outset I would request that the Board note that while the applicant advises that part of the wider landholding has been filled in the past, no details of these works has been provided in terms of when the filling occurred or what material was imported to fill the wider landholding. The Board will also note that while the description of the development is clearly provided in the cover letter, to include all relevant enabling works required to facilitate the proposed filling of the site, I note that the response to the third-party appeal indicates that the area of the current proposed development site was historically excavated in the past. Again, no details of these works are provided or referred to in the planning documents.

7.1.2. Having undertaken a site visit and having regard to the relevant policies pertaining to the subject site, the nature of existing uses on and in the vicinity of the site, the nature and scale of the proposed development and the nature of existing and permitted development in the immediate vicinity of the site, I consider that the main issues pertaining to the proposed development can be assessed under the following headings:

1. Principle of the proposed development
2. Roads & Traffic
3. Environmental Issues
4. Other Issues

7.2. Principle of the proposed development:

7.2.1. Permission is sought for the importation of waste material comprising of construction and demolition wastes for the purposes of filling or raising lands to facilitate land reclamation, all at Inchicorrigan East, Kilcummin, Killarney, Co Kerry. An Environmental Impact Assessment (EIA) Screening Report, an Appropriate Assessment (AA) Screening Report and Natura Impact Statement (NIS) are included with the application. The development will result in the importation of 60,000 tonnes (30,000m³) of soil and stones, to be spread on the site over a period of five years. The submitted details indicate that the area of proposed fill will extend to 1.616ha with the average depth of fill noted at 1.850m. The existing site levels appear to range from between approximately 177m to 181m along the northern area of the site and between 178m to 180.8m to the southern area of the site. The proposed finished level of the site is indicated at between 180.5m to 182m generally across the full area.

7.2.2. The subject site is located approximately 6.5km to the east of Kilcummin and approximately 10.8km to the east of Killarney in County Kerry. Access to the site is over the local road network, with direct access from the local road which connects Gneevguilla to Killarney, and which forms the western boundary of the landholding submitted. The area is very rural in character with a small number of residential properties to the south. There is an existing access point to the road side area of the landholding which essentially comprises a gap in the roadside boundary with no hard

standing or obvious entrance to the lands evident. The proposed development will see the relocation of the entrance, and the provision of a formal access point, at a point to the north eastern corner of the site. The site the subject of this appeal has a stated area of 1.936ha and is currently overgrown and unkempt. The site has an irregular shape which follows the line of previously filled areas of the landholding. The site is bound to the east and south by the Quagmire Stream.

- 7.2.3. The land reclamation works will be undertaken over a period of 5 years with 12,000 tonnes per annum to be imported. There is no phasing plan submitted with the application and the EIA Screening Report submitted indicates that once the filling is completed, the site will be finished with 300mm of topsoil and seeded. The development will also include the installation of environmental controls to include silt fences and drainage catchpits. The closure of the existing 'access' to the site will be with a soil berm along the roadside boundary. There will also be a 10m buffer zone between the proposed fill area and the site boundary along the eastern boundary – adjacent to the Quagmire River, with an additional 10m buffer area noted between the bank of the stream and the identified site boundary, amounting to a 20m buffer between the area of fill and the river bank.
- 7.2.4. Along the southern boundary, the subject site boundary is located 10m from the land drain with the filled area extending to this boundary. A silt fence is to be located along the site boundary at these locations. In addition to the above, the development proposes to provide 3 no. surface water run-off catch-traps along the eastern boundary of the site.
- 7.2.5. The Board will note the intended purpose of the filling of the site is stated to improve the land for agricultural purposes. The site is located in the rural area, and I note that the applicant will be required to apply for a Waste Facility Permit from the County Council to import inert material to the site.
- 7.2.6. In terms of the provisions of the Kerry County Development Plan, the Board will note that the subject site lies within the Municipal District of Castleisland / Corca Dhuibhne which is identified as being under urban influence. The site is also located within a visually sensitive area in terms of landscape.
- 7.2.7. Chapter 13 deals with Water and Waste Management. Section 13.3 of the Plan specifically deals with Waste Management and includes a number of policy

objectives in this regard. In terms of waste management, note that permission is sought to import inert soil and stone only, with no hazardous wastes proposed. I also note that the development will be subject to a waste facility permit with checks in place to ensure no contaminated waste will be imported. Having regard to the nature of the proposed development, I am generally satisfied that the principle of improving agricultural land for agricultural use is acceptable at this location under the provisions of the 2022 CDP.

7.3. Roads & Traffic

- 7.3.1. The Board will note that the third-party appellant raised concerns regarding roads and traffic matters associated with the subject site. Concerns are raised in terms of the nature of the public road and its bog foundations, as well as the identification of an accident blackspot in the vicinity of the site. Concerns regarding the nature and volume of traffic associated with the proposed development are also noted.
- 7.3.2. I would have noted no issue with the quality of the public road on the date of my site inspection and it appears to be lightly trafficked. The proposed development will include the construction of a new access to the site which is to be located at the furthest remove from the closest junction and at a location where adequate sight distances are available. I note that the Council's Roads section raised no objections to the proposed development.
- 7.3.3. With regard to the level of traffic generated by the proposed development, the applicant has indicated that the development will result in a maximum of 2 truckloads arriving at the site per day, equating to a maximum of 4 HGV movements per day, and 22 truck movements generated from the development per week if permitted on this local road. Having regard to the characteristics of the surrounding area, together with the nature of the local public road network, I do not consider that the development will give rise to potential traffic safety hazards. As such, I am satisfied that the issue of roads and traffic impact has been appropriately considered and concluded as not being an issue in principle.

7.4. Environmental Issues

7.4.1. As part of the planning application, the applicant submitted a Natura Impact Statement along with an Environmental Impact Assessment Screening Report, both of which, consider the environmental impacts associated with the proposed development. My assessment has had regard to the application documents, and all other supporting reports submitted, as well as all written submissions. While I will address AA matters separately below in section 8 of this report, I consider it appropriate to present the environmental assessment against the following factors:

- (a) population and human health,
- (b) biodiversity, with particular attention to protected species and habitats protected under the Habitats Directive and the Birds Directive,
- (c) land, soil, water, air and climate,
- (d) material assets, cultural heritage and the landscape,
- (e) the interaction between the above factors.

Population and Human Health

7.4.2. The site is located within a rural area where agriculture is the primary land use. There are a small number of residential properties in the vicinity of the site, the closest property being located approximately 100m to the south. I am satisfied that the proposed development will have little or no impact on the existing land uses in the vicinity of the subject site.

7.4.3. I would acknowledge that the development will give rise to some additional traffic and machinery movements, with a knock-on impact on emissions in terms of air quality, noise and vibration however, due to the limited scale of the development, and the short life span proposed, I do not consider that the proposed development, if permitted will have a significant impact in terms of residential amenity and human health. I am further satisfied that the proposed development is unlikely to give rise to impacts associated with risk to human health or major accidents / disasters.

Biodiversity

7.4.4. The Board will note that a Natura Impact Statement (NIS) was submitted in support of the proposed development application. The NIS and all AA matters are dealt with

in section 8 of this report below. The Board will note that the NIS includes a methodology for the Stage 2 AA and notes that no field surveys were carried out in the preparation of the document. As such, no habitat, flora or fauna surveys were carried out at the site, and no ecological evaluation was undertaken to determine their biodiversity value, if any. That said, I note that the Biodiversity Officer of Kerry County Council also undertook AA screening and provided a comprehensive report to the Planning Authority's file, noting that a site inspection was carried out.

- 7.4.5. The site is not located within any designated site. The closest Natura 2000 site is the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365) which is located approximately 1.6m to the east of the subject site. The landholding from which the subject site is taken is bound by the Quagmire River / Maulyarkane River to the east and south. This waterbody discharges to the Inchicorrigan East River approximately 0.7km downstream of the site and has a hydrological connection to the Knockrower East Stream, which comprises part of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365).
- 7.4.6. In terms of impacts on biodiversity, I note that the overall landholding from which the subject site has been taken, is noted to have originally been poor draining peat over blanket peat, over clayey shales and sandstone till. The peat has long since been cut away and the area has been allowed to revert to a semi-natural state with no appreciable agricultural value. In this regard, there is some ecological / biodiversity value to the site. While the applicant includes details relating to the habitats and species associated with the designated sites, which I will address in section 8 of this report, there is no detail relating to the local biodiversity associated with the actual proposed site provided. I note the third-party submissions in relation to the impact of the development in terms of disruption to local wildlife.
- 7.4.7. On the date of my site inspection, I encountered a number of mammals on the site using the existing vegetation to hide / commute. The level of detail submitted as part of the planning documentation pack does not include any proposals regarding the existing boundaries or existing vegetation on the wider landholding, and the long-term plans for the wider landholding are not clear. While I accept the intention of the proposed filling of the site is to improve the area for agricultural purposes, the entire

landholding at this location, although parts have been filled in the past, is not currently being used for such purposes.

- 7.4.8. Chapter 11 of the Kerry County Development Plan 2022-2028 deals with the Environment and Section 11.2 relates to Biodiversity. The protection and enhancement of the natural and built environment including biodiversity, is identified as one of the ten main goals for the future development of the County, with the Biodiversity Action Plan included in Volume 6 of the Plan. In particular, Objective KCDDP 2-14 states as follows:

Promote regenerative farming and local food production in communities all over the county, using the 'transition farming' and 'climate proofing' approach, with local biodiversity and integrated nature-based solutions and biodiversity being given priority.

In addition to the above, the Board will note that the subject site, although not included in the SAC or National Park boundary, lies within the transition zone associated with the Kerry UNESCO Biosphere Reserve, which is managed by the NPWS.

- 7.4.9. The proposed development will give rise to the loss of an area of semi-natural habitat with associated disturbance to fauna. The biodiversity value of the site has not been considered as part of the proposed development works, for which I have no objection in principle, and in the absence of any detail or assessment in this regard, I cannot conclude that the proposed development will not have a significant impact on the existing local biodiversity of the site and area in the vicinity of the site. In addition, I cannot conclude whether the disturbance to existing local biodiversity, including terrestrial habitats, flora and fauna, will be temporary or permanent, or clarify the extent of cumulative or residual impacts, if any. However, given the nominal scale of the proposed development, together with the comments of the Councils Biodiversity Officer, I would not consider it reasonable to refuse permission for this reason alone.

Land, Soil, Water, Air and Climate

- 7.4.10. With regard to impact on land and soils, the Board will note that the proposed development seeks to infill and recontour the poor-quality, low-lying ground to improve the agricultural quality of the site. There will be no impacts on the local bedrock geology, and no excavations of the existing surface are proposed. I note

that there are no protected Geological Heritage Sites in the vicinity of the subject site and that the development does not propose any direct discharges to ground or surface waters. Quality control procedures will be in place with regard to the materials recovered at the site to ensure that they are acceptable.

- 7.4.11. In addition, the Board will note that the applicant submitted a Construction Environmental Management Plan for the site, which sets out the procedures, standards, management responsibilities and key environmental obligations that apply to address and prevent potential environmental effects that may arise as a result of the proposed development. The CEMP will be updated to provide for any conditions of planning permission and includes details of the management of the construction works and environmental operational controls.
- 7.4.12. In terms of Hydrology & Hydrogeology, the Board will note that the key issue arising relates to the modification of surface water bodies, including modifications to the quality of the water therein. The subject site is located within the Laune-Maine-Dingle Bay catchment, the Quagmire sub-catchment which is noted to be 'Not At Risk of not meeting its Water Framework Directive objectives'. The landholding from which the subject site is taken is bound by the Quagmire River / Malyarkane River to the east and south. This waterbody discharges to the Inchicorrigan East River approximately 0.7km downstream of the site and has a hydrological connection to the Knockrower East Stream, which comprises part of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365).
- 7.4.13. The site is not identified as being at risk from flooding and there is no noted history of such flooding events within or in the vicinity of the site. The proposed development does not include plans to alter the existing drainage patterns of the site and includes control measures to ensure there will be no impact to the SAC as follows:
- Silt fences.
 - Surface water soak pits.
 - No fuel, oil or hydrocarbons will be installed on the site.
 - Machine refuelling will be in a hardstand area using double skinned fuel trucks and spill trays.
 - Plant will be checked regularly.

- Spill kits will be kept in all plant and machinery.

7.4.14. I note that the Biodiversity Officer of Kerry County Council and the IFI has raised no objections to the proposed development subject to the implementation of the mitigation measures as detailed. Overall, in terms of impacts on water quality, I am satisfied that the development would not have a significant adverse impact on water quality subject to the proper implementation of the proposed mitigation measures as detailed in the EIA Screening Report and the Construction and Environmental Management Plan.

7.4.15. With regard to impacts on Air Quality & Climate, there is potential for impacts associated with the stockpiling, handling and placing of material, and with traffic movements generated by the development.

- Mitigation measures proposed relate to best practice measures which include speed limits on site and plant and machinery not being left idle when not in use.
- Given the size and duration of the proposed development, it is not considered that emissions will be significant as to have an impact on air quality or climate.

7.4.16. In terms of Noise & Vibration, the EIA Screening Report submits that while there may be an increase in noise and vibration levels during the importation and deposition of material, the impacts will be localised, minor and intermittent. Best practice measures will be implemented and overall, I am satisfied that there will be no significant impacts arising.

Material Assets, Cultural Heritage and the Landscape

7.4.17. The description of Material Assets in the EPA Guidelines, 2002, include architectural, archaeological, and cultural heritage, designed landscapes, natural resources of economic value, buildings and structures and infrastructure. As such, there is potential for some overlap between the identified factors as grouped in Article 3 of the EIA Directive and Section 171A of the Planning and Development Act, 2000 (as amended).

7.4.18. There are no protected structures in the vicinity of the site and there are no recorded archaeological monuments or artefacts within the limits of the subject application

site. The closest cultural heritage site is identified as a road bridge spanning a tributary of the Quagmire River in the townland of Anablaha, Inchicorrigan East. The bridge is noted to be built of random rubble with sides of abutments of rusticated ashlar, with a single segmental arch, spanning 3.7m, with cut-stone voussoirs, and concrete coping on parapets. This bridge is located approximately 700 to the north of the site, as the crow flies, and is not within the visual range of the site.

- 7.4.19. The Board will note that the proposed development does not include ground disturbance works and that the Kerry County Archaeologist has raised no concerns in this regard. Should the applicant require to strip the overburden on the site prior to deposition of material, pre-development testing will be required. This should be dealt with by way of condition of planning permission.
- 7.4.20. Geological heritage is documented and protected by the Irish Geological Heritage Programme. This is a partnership between GSI and NPWS who designate and protect appropriate sites which represent Ireland's geological heritage under 16 themes ranging from karst features to hydrogeology. In terms of impacts on geological heritage, the proposed development does not involve the removal of soil and bedrock, and as such, if permitted will not result in a permanent impact. There will be no loss of geological heritage due to the development and therefore, no impact on county or statutory geological heritage is envisaged.
- 7.4.21. While the landscape is identified as being visually sensitive, the nature of the proposed development is unlikely to give rise to any long-term visual impacts. There are no scenic routes noted in the vicinity of the site.
- 7.4.22. In terms of natural resources of economic value and infrastructure, the Board will note that if permitted, the development will not create a demand for natural resources as the proposed infill material to be imported to the site will be used to construct the hard stand areas required. The development will also give rise to a small number of jobs. Access to the site will be via the existing road network. Having regard to the limited scale of the proposed development, I do not consider that the development will give rise to any significant impacts in terms of the public road, and that there is adequate capacity in the public road network to accommodate the level of traffic generated by the development.
- 7.4.23. The development does not require any connections or provision of water services.

Interaction Between the Above Factors

- 7.4.24. It is noted that the potential for interactions between one aspect of the environment and another can result in direct or indirect impacts, which may be either positive or negative. No major interactions between the predicted impacts on different environmental topics are envisaged. I have raised concerns in terms of the lack of details relating to the local biodiversity value of the site and would accept that subject to the implementation of appropriate mitigation measures as detailed in the CEMP, the potential for impacts on surface water quality are limited.
- 7.4.25. Having regard to the nature of the proposed development, mitigation measures, or as a consequence of proposed conditions, I do not foresee any likelihood of any of these interrelationships giving rise to significant effects on the environment.

7.5. Other Issues

7.5.1. Existing Filled Area

The Board will note that the appellants have raised concerns in terms of the impact of disturbing the site which holds a large amount of illegally dumped material deposited over many years with concerns raised in relation to pollutants. The previously filled area of the landholding does not form part of the current appeal site or proposed development and there is no proposal to disturb the existing filled area.

The development will provide for a new access to the rear of the landholding and the proposed development site along the northern area of the site which is indicated to have been filled in the past on the submitted documents. The works in this area will include the provision of a hard stand area for trucks to be accommodated on the site to dispense of the material to be received at the site.

Prior to the commencement of any development on the site, the applicant should be required to submit clear proposals for the construction of the turning head area with regard to the underlying conditions within the site, so as to ensure no release of contaminants into the adjacent land drains. Silt fences should be provided along the boundaries of this area of the proposed development site to ensure no discharge to the drains.

7.5.2. Residential Amenity Issues

The Board will note that the subject site is located within a rural area with limited residential development, the closest house being located approximately 100m to the south west of the site. There is no residential property directly abutting the subject site. As such, I would consider that there is limited potential to impact on residential amenities in the area. I do not consider that the development will give rise to any significant issues in terms of noise or fugitive dust given the separation distance between the site and residential properties, and also having regard to the existing site boundaries at the site. I would also note that any waste facility permit will provide limits for noise arising from the development and that the development will operate in compliance with the relevant Codes of Practice for such facilities. I am further satisfied that the proposed development is unlikely to give rise to impacts associated with risk to human health or major accidents / disasters.

Having regard to the nominal size of the site, and the limited works proposed over the 5-year life of the development, the nature of the material to be deposited on the site and the distance between the site and residential properties, I am generally satisfied that the development will not give rise to significant adverse impacts on existing residential amenities.

7.5.3. Visual Amenity Issues

The subject site lies within an area which has been identified as being visually sensitive where such landscape areas comprise the outstanding landscapes throughout the County which are sensitive to alteration. Rugged mountain ranges, spectacular coastal vistas and unspoilt wilderness areas are some of the features within this designation. These areas are particularly sensitive to development. In these areas, development will only be considered subject to satisfactory integration into the landscape and compliance with the proper planning and sustainable development of the area. The current CDP provides that development is not precluded in visually sensitive landscapes however, development proposals will be required to demonstrate that they integrate and respect the visual quality of the landscape.

The Board will note that there are no identified scenic routes noted in the vicinity of the subject site. Having undertaken a site visit I would accept that there will be some

visual impacts associated with the proposed development during the 5 year lifespan of the permission, if granted. However, following the completion of the filling, I would not consider that the visual impacts are significant or would be significant in the long term.

In support of the proposed development, the applicant submitted a topographical survey of the land. The survey produced contours of the proposed fill area and aided in determining the volume of material required to raise the land to provide an even surface to facilitate agricultural activities. The applicant also included details of the volume of material to be imported and the number of truck movements associated with the volume. I note the relatively small area to be filled and would accept the submission of the applicant that the work is proposed to improve to the production capabilities of the agricultural land.

The development does not include for the removal of the existing hedgerow boundaries which provide a screen for the site. Any grant of planning permission should require the retention of the existing natural boundaries as part of the overall development. On completion of the filling of the site, I am generally satisfied that the development will have little visual impacts on the landscape in this area subject to compliance with conditions which require that the edges of the filled area be sloped and graded across the fill area to provide for a smooth transition. I have no objections to the proposed development in terms of visual impacts.

7.5.4. Development Contribution

The Board will note the provisions of the Kerry County Council Development Contribution Scheme 2017 which includes Quarries / Landfill as a class of development for which development contributions are required. The Scheme advises that 'the development of a landfill shall be subject of Development Contributions. A Roads & Transport Contribution of €0.19 per m³ shall apply along with a €0.10 per m³ as a Community & Amenity Contribution. Any buildings associated with a landfill shall be charged at the standard industrial rate. Buildings associated with waste recovery shall also be charged the standard rate for industrial buildings. This is to be calculated at consent stage and levied on the basis of the potential volume of material to be extracted.'

The proposed development does not include any buildings and provides that 30,000m³ of inert material will be imported to the site to raise the site levels and as such, a development contribution in the amount of €8,700 is required to be paid for the development. A condition to this effect should be included in any grant of planning permission.

8.0 **Appropriate Assessment**

8.1. **Introduction:**

8.1.1. The site is not located within any designated site. The closest Natura 2000 site is the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365) which is located approximately 1.6m to the east of the subject site. In addition to the above, the following Natura 2000 sites lie within 15km of the subject site:

- The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) - approximately 6.5km to the north
- The Blackwater River (Cork/Waterford) SAC (Site Code: 002170) - approximately 6.8km to the south east.
- Castlemaine Harbour SAC (Site Code: 000343) - approximately 7km to the west
- Sheheree (Ardagh) Bog SAC (Site Code: 000382) - approximately 10.6km to the south west.
- The Killarney National Park SPA (Site Code: 004038) - approximately 10.8km to the south west.

8.1.2. The EU Habitats Directive 92/43/EEC provides legal protection for habitats and species of European importance through the establishment of a network of designated conservation areas collectively referred to as Natura 2000 (or 'European') sites.

8.1.3. Under Article 6(3) of the Habitats Directive, an Appropriate Assessment must be undertaken for any plan or programme not directly connected with or necessary to the management of a European site but likely to have a significant effect on the site

in view of its conservation objectives. The proposed development is not directly connected with or necessary to the management of a European site. The Board will note that a Natura Impact Statement (NIS) was submitted as part of documentation for permission for the proposed development to assess the likely or possible significant effects, if any, arising from the proposed development on any European site. An Appropriate Assessment Screening Report was also provided by the applicant.

8.1.4. In accordance with these requirements the Board, as the competent authority, prior to granting a consent must be satisfied that the proposal individually or in combination with other plans or projects, is either not likely to have a significant effect on any European Site or adversely affect the integrity of such a site, in view of the site(s) conservation objectives.

8.1.5. Guidance on Appropriate Assessment is provided by the EU and the NPWS in the following documents:

- Assessment of plans and projects significantly affecting Natura 2000 sites – methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC (EC, 2001).
- Appropriate Assessment of Plans and Projects in Ireland – Guidance for Planning Authorities (DoEHLG), 2009.

Both documents provide guidance on Screening for Appropriate Assessment and the process of Appropriate Assessment itself.

8.2. AA Screening Report

8.2.1. The application was accompanied by an Appropriate Assessment Screening Report, as part of the NIS and dated 22nd March 2022. The document was prepared by Enviroguide Consulting. This report assesses whether significant effects to the Natura 2000 network are likely to occur as a result of the project. The report sets out the limitations of the report and the methodology employed in its preparation and provides a description of the project proposed as well as including a description of the surface water drainage regime at the site.

8.2.2. The AA Screening Report identifies the zone of influence as 15km from the boundary of the development and identifies six Natura 2000 sites within this radius. It is noted that no direct impacts are likely given the location of the site but notes that indirect impacts potentially arise with regard to the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365), due to potential hydrological pathway via surface water, and discharges to the Maulyarkane Stream / Quagmire River which flows along the eastern boundary of the site. The report notes that there is no hydrological connection to the five other identified sites within the zone of influence and as such, the following sites are screened out as there is no environmental concern warranted:

- The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) - approximately 6.5km to the north
- The Blackwater River (Cork/Waterford) SAC (Site Code: 002170) - approximately 6.8km to the south east.
- Castlemaine Harbour SAC (Site Code: 000343) - approximately 7km to the west
- Sheheree (Ardagh) Bog SAC (Site Code: 000382) - approximately 10.6km to the south west.
- The Killarney National Park SPA (Site Code: 004038) - approximately 10.8km to the south west.

8.2.3. Mitigation measures are to be employed and it is noted that these measures cannot be taken into account at screening stage and will require to proceed to stage 2 AA.

8.2.4. The Report presents details of the relevant SAC, including details of the qualifying interests. An Assessment of Potential Impacts is presented in Section 3.5 of the document. Natura 2000 sites are considered relevant where a source-pathway-receptor link exists, and the report concludes that there are potential impacts associated with the proposed development for the SAC due to the hydrological pathway to the site. The Conclusion of the AA Screening (Stage 1) is that a full AA will be required with regard to the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365).

8.3. **Natura Impact Statement**

8.3.1. The Natura Impact Statement was submitted by the applicant, which seeks to examine the potential impacts of the proposed development on the following European Site:

- Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365)

Table 1 of the report identifies the qualifying features and their conservation objectives for the SAC.

8.3.2. Having reviewed the NIS and supporting documentation, together with relevant submissions, and having undertaken a site inspection, I am satisfied that a Stage 2 Appropriate Assessment is required for the following European Site on the basis of the proximity of the site to the appeal site, the potential hydrological pathway and the potential for indirect impacts to water quality arising:

- Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365)

8.3.3. I am satisfied that the submitted NIS provides adequate information in respect of the site, clearly identifies the potential impacts, and uses best scientific information and knowledge. Section 6 of the NIS document presents an assessment of potential impacts and Section 8 sets out details of the proposed mitigation measures to be employed in terms of the management of surface water associated with the proposed development.

8.3.4. The NIS concludes that with the implementation of the mitigation measures proposed, it can be concluded that the proposed development will have no adverse effects on the qualifying interests, special conservation interests and on the integrity and extent of the Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365). I am satisfied that the information is sufficient to allow for Appropriate Assessment of the proposed development.

8.4. **Consultations and Observations**

8.4.1. The AA Screening Report and NIS submitted with the application lists all data sources and reference documents used in the preparation of the document.

- 8.4.2. The County Councils Biodiversity Officer report notes agreement with the conclusions of the NIS and considers that there is potential for the proposal to have indirect impacts through risks of impact to water quality in the SAC, if a pollution event occurred due to the construction and / or operational works. It is further noted that possible groundwater impacts could occur during both the construction and operational phases. It is concluded however, that given the nature of the material to be imported to the site, being inert, no indirect impacts on groundwater are envisaged. The Biodiversity Officer completed an AA of the effects of the proposed development on the integrity of the SAC and concluded that the development will not have an adverse effect on the integrity of a European Site, subject to the implementation of the mitigation measures outlined.
- 8.4.3. Inland Fisheries Ireland also submitted a report in relation to the proposed development noting no objection in principle to the proposed development, subject to the implementation of a fenced off riparian zone along the watercourse at the boundary of the site, as well as the installation of a silt fence. Monitoring of all land drains before they leave the site and regular inspection and maintenance of the silt fence will be required, amongst other requirements with regard to movement of machinery, working in prolonged wet conditions and biosecurity concerns.
- 8.4.4. The Councils Environment Report raised no concerns in terms of AA, other than noting that water management measures be installed and completed prior to the importation of any material, that all mitigation measures as detailed be fully implemented and that existing vegetation along existing watercourses shall be maintained with no emission of polluting matter from the facility to any watercourse.
- 8.4.5. I note that the third-party submissions raised a number of concerns with regard to the potential impact of the development on the biodiversity of the area including disruption to local wildlife.

8.5. **Screening for Appropriate Assessment:**

- 8.5.1. I have presented a summary of the AA Screening report submitted with the application above. The purpose of AA screening, is to determine whether appropriate assessment is necessary by examining:

- a) whether a plan or project can be excluded from AA requirements because it is directly connected with or necessary to the management of the site, and
- b) the likely effects of a project or plan, either alone or in combination with other projects or plans, on a Natura 2000 site in view of its conservation objectives and considering whether these effects will be significant.

8.5.2. The AA Screening Report submits that the zone of influence extends to 15km from the boundary of the development. The report identifies the relevant Natura 2000 site within the identified zone of influence as being the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365). In terms of AA, the Board will note that the development is not directly connected or necessary to the management of a European Site.

8.5.3. In addition to the above, the Board will note that the following Natura 2000 sites lie within 15km of the subject site:

- The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161) - approximately 6.5km to the north
- The Blackwater River (Cork/Waterford) SAC (Site Code: 002170) - approximately 6.8km to the south east.
- Castlemaine Harbour SAC (Site Code: 000343) - approximately 7km to the west
- Sheheree (Ardagh) Bog SAC (Site Code: 000382) - approximately 10.6km to the south west.
- The Killarney National Park SPA (Site Code: 004038) - approximately 10.8km to the south west.

8.6. Conclusion on Stage 1 Screening:

8.6.1. Having regard to the information submitted as part of the application, together with the information available on the NPWS website, the scale and nature of the proposed development and likely effects, separation distance and functional relationship between the proposed works and the European sites, their conservation objectives and taken in conjunction with my inspection of the site and the

surrounding area, I am satisfied that the following sites can be screened out from further assessment:

- The Stack's to Mullaghareirk Mountains, West Limerick Hills and Mount Eagle SPA (Site Code: 004161)
- The Blackwater River (Cork/Waterford) SAC (Site Code: 002170)
- Castlemaine Harbour SAC (Site Code: 000343)
- Sheheree (Ardagh) Bog SAC (Site Code: 000382)
- The Killarney National Park SPA (Site Code: 004038)

8.6.2. It is further reasonable to conclude, on the basis of the information on the file, which I consider adequate in order to issue a screening determination, that the proposed development, either individually or in combination with other plans or projects would not be likely to have a significant effect on the above European sites, in view of the sites' conservation Objectives and that a Stage 2 Appropriate Assessment is not required in respect of this site.

8.6.3. There is potential however, for the development to give rise to potential impacts in terms of water quality of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC during the construction and operation phases of the development. Potential impacts on qualifying features, conservation interests and conservation objectives are primarily related to water quality.

8.6.4. In light of the above, a stage 2 Appropriate Assessment was carried out in relation to the following European Site:

- Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365)

The potential impacts (direct / indirect and in-combination effects) of the development on the site are examined in light of each of the site's conservation objectives.

8.7. **Stage 2 Appropriate Assessment**

8.7.1. The following table sets out the qualifying interests for the identified Natura site:

European Site	Qualifying Interests
<p>Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365)</p> <p>Located approx. 1.6km to the east of the site</p>	<ul style="list-style-type: none"> • Oligotrophic waters containing very few minerals of sandy plains (<i>Littorelletalia uniflorae</i>) [3110] • Oligotrophic to mesotrophic standing waters with vegetation of the <i>Littorelletea uniflorae</i> and/or <i>Isoeto-Nanojuncetea</i> [3130] • Water courses of plain to montane levels with the <i>Ranunculion fluitantis</i> and <i>Callitricho-Batrachion</i> vegetation [3260] • Northern Atlantic wet heaths with <i>Erica tetralix</i> [4010] • European dry heaths [4030] • Alpine and Boreal heaths [4060] • <i>Juniperus communis</i> formations on heaths or calcareous grasslands [5130] • Calaminarian grasslands of the <i>Violetalia calaminariae</i> [6130] • <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) [6410] • Blanket bogs (* if active bog) [7130] • Depressions on peat substrates of the <i>Rhynchosporion</i> [7150] • Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i> in the British Isles [91A0] • Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i>, <i>Alnion incanae</i>, <i>Salicion albae</i>) [91E0] • <i>Taxus baccata</i> woods of the British Isles [91J0] • <i>Geomalacus maculosus</i> (Kerry Slug) [1024] • <i>Margaritifera margaritifera</i> (Freshwater Pearl Mussel) [1029] • <i>Euphydrias aurinia</i> (Marsh Fritillary) [1065] • <i>Petromyzon marinus</i> (Sea Lamprey) [1095] • <i>Lampetra planeri</i> (Brook Lamprey) [1096] • <i>Lampetra fluviatilis</i> (River Lamprey) [1099] • <i>Salmo salar</i> (Salmon) [1106] • <i>Rhinolophus hipposideros</i> (Lesser Horseshoe Bat) [1303] • <i>Lutra lutra</i> (Otter) [1355] • <i>Trichomanes speciosum</i> (Killarney Fern) [1421] • <i>Najas flexilis</i> (Slender Naiad) [1833] • <i>Alosa fallax killarnensis</i> (Killarney Shad) [5046]

Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365)

- 8.7.2. This very large site encompasses the mountains, rivers and lakes of the Iveragh Peninsula, and the Paps Mountains which stretch eastward from Killarney towards Millstreet. The majority of the site is in Co. Kerry, with a small portion in Co. Cork. This is the most mountainous region in Ireland and includes Carrauntoohil, the highest peak in the country at 1,039 m. The most common habitat types within the overall site are blanket bog, heath and upland grassland. The heath and grassland generally occur on areas with shallow peat and on the mineral soils of the steep mountain sides, while the blanket bog occurs on the more gentle slopes, plateaux and other level ground. Often the habitats occur in a mosaic, with exposed rock frequently occurring. A variety of blanket bog types are represented from lowland valley to mountain blanket bog.
- 8.7.3. The site supports most of the Irish mammal species. Of particular note is the occurrence of two E.U. Habitats Directive Annex II species: Lesser Horseshoe Bat, with a total population of about 300 individuals distributed at several locations, including both nursery and hibernation sites, and Otter. The site is valuable for its rare fish species, five of which are listed on Annex II of the E.U. Habitats Directive and there are numerous rare invertebrates within the site. The Kerry Slug and Pearl Mussel populations are of particular importance in a national context.
- 8.7.4. The main land use within the site is grazing by sheep. In and around the National Park deer grazing is also common. The extensive grazing has caused damage to many of the terrestrial habitats, resulting in degradation of heath and blanket bogs and prevention of woodland regeneration.
- 8.7.5. Overall, the site is of high ecological value because of the diversity, quality and extensiveness of many of the habitats, and impressive list of rare species of flora and fauna. In recognition of its importance the Killarney National Park has been designated a World Biosphere Reserve.
- 8.8. **Conservation Objectives:**
- 8.8.1. The Conservation Objectives for the relevant designated site are as follows:

European Site	Conservation Objectives
<p>Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365)</p> <p>Located approx. 1.6km to the east of the site</p>	<ul style="list-style-type: none"> • The NPWS has identified a site-specific conservation objective to maintain the favourable conservation condition of the following habitat and species listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> ○ Water courses of plain to montane levels with the Ranunculion fluitantis and Callitriche-Batrachion vegetation [3260] ○ Juniperus communis formations on heaths or calcareous grasslands [5130] ○ Calaminarian grasslands of the Violetalia calaminariae [6130] ○ Geomalacus maculosus (Kerry Slug) [1024] ○ Petromyzon marinus (Sea Lamprey) [1095] ○ Lampetra planeri (Brook Lamprey) [1096] ○ Lampetra fluviatilis (River Lamprey) [1099] ○ Salmo salar (Salmon) [1106] ○ Rhinolophus hipposideros (Lesser Horseshoe Bat) [1303] ○ Lutra lutra (Otter) [1355] ○ Trichomanes speciosum (Killarney Fern) [1421] ○ Najas flexilis (Slender Naiad) [1833] • The NPWS has identified a site-specific conservation objective to restore the favourable conservation condition of the following habitat and species listed as a Qualifying Interest, as defined by a list of attributes and targets: <ul style="list-style-type: none"> ○ Oligotrophic waters containing very few minerals of sandy plains (Littorelletalia uniflorae) [3110] ○ Oligotrophic to mesotrophic standing waters with vegetation of the Littorelletea uniflorae and/or Isoeto-Nanojuncetea [3130] ○ Northern Atlantic wet heaths with Erica tetralix [4010] ○ European dry heaths [4030] ○ Alpine and Boreal heaths [4060] ○ Molinia meadows on calcareous, peaty or clayey-silt-laden soils (Molinion caeruleae) [6410] ○ Blanket bogs (* if active bog) [7130]

	<ul style="list-style-type: none"> ○ Depressions on peat substrates of the Rhynchosporion [7150] ○ Old sessile oak woods with Ilex and Blechnum in the British Isles [91A0] ○ Alluvial forests with Alnus glutinosa and Fraxinus excelsior (Alno-Padion, Alnion incanae, Salicion albae) [91E0] ○ Taxus baccata woods of the British Isles [91J0] ○ Margaritifera margaritifera (Freshwater Pearl Mussel) [1029] ○ Euphydryas aurinia (Marsh Fritillary) [1065] ○ Alosa fallax killarnensis (Killarney Shad) [5046]
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8.9. Potential Significant Effects

8.9.1. In terms of an assessment of Significance of Effects of the proposed development on qualifying features of Natura 2000 sites, having regard to the relevant conservation objectives, I would note that in order for an effect to occur, there must be a pathway between the source (the development site) and the receptor (designated sites). As the proposed development site lies outside the boundaries of the European Sites, no direct effects are anticipated.

8.9.2. In terms of indirect effects, and with regard to the consideration of a number of key indications to assess potential effects, the following is relevant:

- **Habitat loss / alteration / fragmentation:** The subject site lies at a remove of some 1.6km from the boundary of any designated site at its closest point. As such, there shall be no direct or indirect loss / alteration or fragmentation of protected habitats within any Natura 2000 site.
- **Disturbance and / or displacement of species:** The site lies within a rural area of Co. Kerry, primarily surrounding by agricultural land.

No qualifying species or habitats of interest, for which the designated site is so designated, are noted to occur at the site. As the subject site is not located within or immediately adjacent to any Natura 2000 site and having regard to the nature of the works proposed, there is little or no potential for disturbance or displacement impacts to land based species or habitats for which the identified Natura 2000 site have been designated. I further note

the proposals to provide adequate buffer zones between the fill areas of the site and the existing water courses which bound the site to the east and south.

In terms of the proposed works, and the potential for surface water or dust to result in the contamination of the watercourse and drains which run to the eastern and southern boundaries of the site, I note that mitigation measures have been included in order to prevent such occurrences. I also acknowledge the concerns of the adjacent third-party landowner with regard to the potential for the displacement of local wildlife, and while I would accept said concerns, I am satisfied that the proposed works will be set back from the watercourses and that existing hedgerow boundaries will be retained on the site. I further note that the NIS includes mitigations measures proposed to protect water courses and drains from surface water runoff and potential contamination.

- **Water Quality:** The proposed development relates to the filling of an agricultural site within a rural area. The development is proposed in order to improve the quality and agricultural functionality of the site. The material to be used to fill the site will comprise solely of stone and soil, with no proposal for hazardous materials to be imported to the site. Given the presence of drains and water courses surrounding the subject site, which feeds into the Inchicorrigan East River approximately 0.7km downstream of the site and has a hydrological connection to the Knockrower East Stream, which comprises part of the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365, it is reasonable to conclude that this may act as a conduit for surface water runoff, containing pollutants, to reach the Natura 2000 site. There is potential, therefore for contaminants to temporarily affect water quality and in particular sediment pollution, and therefore impact on the water dependent habitats and species within the SAC.

The application includes a number of mitigation measures which are to be implemented on the site, including the retention of riparian buffer zones extending from 7-10m from the boundary of the site to the proposed filled

area, and the provision of three surface water catchpits along the eastern boundary adjacent to the Quagmire River.

8.9.3. Having regard to the above, it might be reasonable to consider that, subject to the full implementation of the mitigation measures as described in section 8 of the submitted NIS, there is little or no potential for impacts on water quality or QIs associated with the SAC arising.

8.9.4. Having regard to the scale of the proposed development, I am generally satisfied that the principle of the proposed development is acceptable and that if permitted, is unlikely to impact on the overall water quality of any Natura 2000 site in proximity to the site.

8.10. In Combination / Cumulative Effects

8.10.1. In terms of potential in-combination / cumulative impacts associated with the proposed development, I note Section 6.6 of the NIS which has considered a number of documents and planning applications in the area. The wider area has not been the subject of significant development and the most recent planning application was for the construction of a house.

8.10.2. Given the nature of the proposed development, being the importation of soil and stone to an agricultural site, I consider that any potential for in-combination effects on water quality in the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC can be excluded. In addition, I would note that all other projects within the wider area which may influence conditions in the Killarney National Park, Macgillycuddy's Reeks and Caragh River Catchment SAC via rivers and other surface water features are also subject to AA.

8.11. Mitigation Measures

8.11.1. Mitigation and best practice measures are proposed to address the potential adverse effects of the development to ensure that the development will not adversely affect the identified European Sites or the conservation status of protected habitats and species they support. The environmental measures are proposed to deal with surface water runoff containment and the management of fuels on the site associated with the construction and operational phases.

8.12. Overall Appropriate Assessment Conclusion

8.12.1. Having regard to the nature of the subject development site, the nature of the proposed development, together with the details presented in the Natura Impact Statement which I consider adequate in order to carry out a Stage 2 Appropriate Assessment, I consider it reasonable to conclude on the basis of the information on the file, that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of the following Natura 2000 site, or any other European site, in view of the sites Conservation Objectives:

- Killarney National Park, Macgillicuddy's Reeks and Caragh River Catchment SAC (Site Code: 000365)

9.0 Recommendation

I recommend that planning permission be granted for the proposed development for the following stated reason.

10.0 Reasons and Considerations

Having regard to the nature and extent of the proposed development, it is considered that, subject to compliance with the conditions set out below, the proposed development would not seriously injure the amenities of the area or of property in the vicinity, would not be prejudicial to public health and would be acceptable in terms of traffic safety and convenience. The proposed development would, therefore, be in accordance with the proper planning and sustainable development of the area.

11.0 Conditions

1. The development shall be carried out and completed in accordance with the plans and particulars lodged with the application, except as may otherwise be required in order to comply with the following conditions. Where such conditions require details to be agreed with the planning authority, the developer shall agree such details in writing with the planning authority prior to commencement of development and the development shall be carried out and completed in accordance with the agreed particulars.

Reason: In the interest of clarity.

2. This permission shall apply for a period of five years from the date of this order. Following the expiration of this period, the importation of material to the site and operations on site shall cease, unless prior to the end of the period, planning permission shall have been granted for a further period.

Reason: To enable a review of the effect of the development on the amenities of the area.

3. The maximum quantities of inert soil and stone to be accepted at the site shall not exceed 60,000 tonnes (30,000m³) in total over the period referred to in condition number 2 of this permission with the number of deliveries limited to a maximum of 2 number loads per day.

Reason: In the interests of clarity and traffic safety.

4. The imported material to be deposited on the land shall comprise inert soil, stone and topsoil only and shall be levelled, contoured and seeded upon the completion of the works and protected until established.

Reason: In order to assimilate the development into the surrounding rural landscape, in the interest of visual amenity.

5. (a) A minimum 10-meter-wide buffer zone shall be maintained between the proposed fill area of the site and the identified site boundary along the eastern side of the site (being 10m from the bank of the adjacent stream).

(b) A minimum 10-metre-wide buffer zone shall be maintained between the proposed fill area of the site and the drains which run along the northern, western and southern boundaries of the site.

(c) The buffer zones shall be cordoned off from earth movement works and suitable bunds, barriers and silt fencing shall be erected along the boundary of the infill area and the buffer zone to prevent soil and sediment from

entering watercourses throughout the course of works. No inert, or any other material shall be deposited in these buffer zones.

(d) Details of the buffer zone and the provision of bunds, barriers and silt fencing shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development, including at the proposed access and turning head area where there is an interface with previously filled areas.

(e) Prior to the commencement of any development on the site, revised drawings and fully scaled cross sections, shall be provided for the written approval of the Planning Authority clearly identifying the buffer zones, including proposals to provide appropriate barriers to prevent accidental deposition of material within the buffer zones, including at the proposed access and turning head area where there is an interface with previously filled areas.

(f) The revised plans and sections required to comply with this condition shall clearly show the original / existing level profile and the proposed finished level profile and details of the minimum, maximum and average depth of fill shall be noted. The fill area in m² and fill volume in m³ shall also be submitted to the Planning Authority for agreement.

Reason: In the interest of clarity and in order to protect receiving waters.

6. (i) Prior to commencement of development, a Construction Environmental Management Plan (CEMP) shall be submitted for the written agreement of the planning authority.

(ii) All works on the site shall be carried out strictly in accordance with the mitigation measures specified in the Construction Environmental Management Plan (CEMP).

(iii) No development shall be commenced on the site until part (i) of this condition is complied with.

Reason: In the interest of environmental protection.

7. A Temporary Bench Mark (TBM) to which the existing and proposed levels relate, shall be installed and maintained for the duration of the proposed works. Full details of the TBM, including photographic evidence and details of its location on a site layout drawing shall be submitted for the written approval of the Planning Authority prior to the commencement of any development on the site.

Reason: In the interests of clarity and the proper planning and sustainable development of the area.

8. The importation of inert soil, stone and topsoil and the operation of associated machinery shall be carried out only between the hours of 0800 to 1900 Mondays to Fridays, between 0800 to 1400 hours on Saturdays and not at all on Sundays, bank or public holidays. Deviation from these times will only be allowed in exceptional circumstances where prior written approval has been received from the planning authority.

Reason: In the interest of good traffic management and to protect the amenities of the area.

9. (a) Details of road signage including advance warning notices and proposals for traffic management at the site entrance, shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development.
(b) A wheel wash facility shall be installed at the exit of the site. The public roadway shall be kept clean and tidy at all stages of the development.

Reason: In the interest of traffic safety.

10. The development shall not commence on this site until a Waste Facility Permit, has been issued and site operations shall be in accordance with the said permit.

Reason: In the interest of amenity and to prevent environmental pollution.

11. All trees and hedgerows on the boundaries of the site shall be retained and maintained. Retained trees and hedgerows shall be protected from damage during construction and infill development works.

Reason: To protect trees and planting during the construction and infill period, in the interest of visual amenity and biodiversity.

12. During the construction phase of the proposed development, the noise level from within the boundaries of the site measured at noise sensitive locations in the vicinity, shall not exceed-

(a) an L_{Ar,T} value of 55 dB(A) between the hours of 0800 and 1900 from Mondays to Fridays, between the hours of 0800 and 1400 on Saturdays (excluding public holidays).

(b) an L_{Aeq, T} value of 45 dB(A) at any other time.

Reason: To protect the residential amenities of property in the vicinity.

13. During the construction stage, dust emissions shall not exceed 350 milligrams per square metre per day averaged over a continuous period of 30 days (Bergerhoff Gauge). Details of a monitoring programme for dust shall be submitted to, and agreed in writing with, the planning authority prior to commencement of development. Details to be submitted shall include monitoring locations, the commencement date and the frequency of monitoring results.

Reason: To protect the residential amenities of property in the vicinity.

14. The developer shall pay the sum of **€€8,700** (Eight thousand and seven hundred euro) updated at the time of payment in accordance with changes in the Wholesale Price Index – Building and Construction (Capital Goods), published by the Central Statistics Office, to the planning authority as a special contribution under section 48 (2)(c) of the Planning and Development Act 2000, in respect of upgrading works carried out to the L-1043 between

Sally's Cross and the site, together with the change in the road surface, to accommodate the proposed development and which are specific exceptional costs not covered in the Councils General Development Contribution Scheme. This contribution shall be paid prior to commencement of development or in such phased payments as the planning authority may facilitate. The application of indexation required by this condition shall be agreed between the planning authority and the developer or, in default of such agreement, the matter shall be referred to An Bord Pleanála to determine.

Reason: It is considered reasonable that the developer should contribute towards the specific exceptional costs which are incurred by the planning authority which are not covered in the Development Contribution Scheme and which will benefit the proposed development.

A. Considine
Planning Inspector
30th March 2023